IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9665 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOKBHAI L SHAH

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

Mr.Uday Bhatt AGP Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 02/12/2000

ORAL JUDGEMENT

#. The petitioner has by way of this petition under Article 226 of the Constitution of India challenged the detention order passed against him by the Police Commissioner, Ahmedabad City on 27.7.2000 in exercise of the powers conferred upon him under section 3(1) of the

Gujarat Prevention of Anti Social Activities Act 1985 (PASA Act for short).

#. The petitioner came to be detined under the provisions of the PASA Act on 27.7.2000.

#. The grounds of detention placed on record reveals that in all 4 crimes were registered within the city of Ahmedabad against the petitioner under sections 379,394,452,506(2) 399 etc. of the Indian Penal Code and under section 25(1) (B)(A) of the Arms Act.

#. The detaining authority considered the papers of investigation in the above said 4 crimes and came to the conclusion that the petitioner was indulging in cases of theft and fabricating documents. The detaining authority also came to the conclusion that the petitioner keeps illegally weapon in his possession and he is indulging in anti-social activity there by public order and peace is disturbed. Further the detaining authority took into consideration the statements of 2 witnesses who on assurance of anonymity offered statements regarding the incident took place on 28.6.2000 and 7.7.2000. It was revealed that in both the incidents the petitioner had beaten the respective witnesses and disrupted the public order. From the above material the detaining authority came to the conclusion that the petitioner was an obstruction to public order and public peace and was a dangerous person within the meaning of section 2(c) of the PASA Act.

#. Learned advocate Ms. Suman Pahwa for M/s Thakkar Associates for the petitioner and Mr. Uday Bhatt learned AGP for the respondents were heard.

#. The order came to be challenged on various grounds. One of the grounds which was vehemently urged was regarding total non application of mind by the detaining authority not only qua legal position but qua facts of the case. It was urged that the detaining authority failed to consider the aspect that in the crimes registered against the petitioner, at the time of serving the detention order the petitioner was in jail and is still in judicial custody in the above said crimes registered against him. It is also urged that the detaining authority wrongly considered the provisions of cancellation of bail and therefore, the order was vitiated by non consideration of less drastic remedy available to the petitioner.

#. From the rival contentions it appears that the order

of detention is vitiated on two grounds. The purpose of PASA Act is to keep away the person doing anti-social activities from the public for a temporary period so as to prevent his illegal activity which could be an obstruction to public order. In this case the detaining authority observed that in all the above crimes registered against the petitioner the petitioner was in judicial custody till the passing of the order. It goes to suggest that the petitioner was in custody right from February 2000 till 22.7.2000 when the order came to be passed and there was no possibility in the near past or future for the petitioner to continue this illegal activity because he being in judicial custody. Therefore, the detaining authority failed to consider this aspect at all which is total non application of mind qua facts of the case. Secondly the detaining authority brushed aside the less drastic remedy available to the detaining authority under section 437(5) Cr.P.C by merely saying that the procedure was likely to consume time and therefore the detaining authority has no other alternative but to pass the order of detention under the PASA Act. Thus without resorting to less drastic remedy available to the detaining authority under section 437(5) under the Cr.P.C. passing of the order of detention was clearly without application of mind and on this ground the order of detention is required to be set aside and quashed.

#. In view of this discussion the order passed by the Police Commissioner Ahmedabad City on 22.7.2000 against the petitioner under the PASA Act is ordered to be quashed and set aside. The petitioner-Ashokbhai L.Shah is hereby ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule is made absolute.

(J.R.Vora.J)

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